



March 9, 2023

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By ECF

The Honorable Karen S. Marston
United States District Court
Eastern District of Pennsylvania
601 Market Street, Room 5118
Philadelphia, PA 19106

Re: *In re Remicade Antitrust Litigation*, No. 2:17-cv-04326

Dear Judge Marston:

I write on behalf of defendants Johnson & Johnson (“J&J”) and Janssen Biotech, Inc (together, “Janssen”) in connection with the February 23, 2023 final settlement approval hearing in the above-captioned case. During a colloquy about the *Prudential* factors, Your Honor asked whether class counsel was aware of any governmental investigations related to the alleged anticompetitive conduct at issue in this litigation. 2/23/23 Tr. 25:21-25. The existence of a governmental investigation is relevant to determining whether class counsel was aided by or relied on the government’s efforts. *E.g., In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 749 (E.D. Pa. 2013).

In July 2019, J&J disclosed in its second-quarter 10-Q that the FTC had issued a civil investigative demand (“CID”) in connection with an investigation of contracting practices related to Remicade.¹ The FTC’s CID and J&J’s disclosure came nearly two years after the first class plaintiff filed its complaint in September 2017. *See* ECF 1. Given the timing of the class complaint, class counsel could not have relied on the existence of the CID in bringing claims, and class counsel confirmed to the court that she was unaware of the investigation. However, after reading the transcript, I wanted to clarify the record in response to the Court’s question to class counsel.

¹ Johnson & Johnson Form 10-Q for the quarterly period ending June 30, 2019, at 44, *available at* <https://www.sec.gov/ix?doc=/Archives/edgar/data/200406/000020040619000053/a2q10q06-30x19.htm>; *see also* Johnson & Johnson Form 10-K for the year ending January 1, 2023, at 100 (stating that Janssen has produced documents and information to the FTC and is in ongoing discussions with the FTC regarding its inquiry), *available at* <https://www.sec.gov/ix?doc=/Archives/edgar/data/200406/000020040623000016/jnj-20230101.htm>.

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Relatedly, because the FTC's CID to Janssen remains open, Janssen may need to seek relief from certain terms of the protective orders governing the treatment of discovery material after the conclusion of the pending class litigation. *See* ECF 88, 103. If the Court grants final approval, Janssen will make an application to the Court at the appropriate time.

Respectfully submitted,

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cc: Counsel of Record